

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 9636
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Vocational Rehabilitation Division of the Department of Rehabilitation and Aging (hereinafter referred to as "V.R." or "the Department") not to contribute more than \$3,000 towards the purchase of a handicapped-equipped van for the petitioner.¹

FINDINGS OF FACT

The petitioner is a forty-six-year-old man with multiple sclerosis. He lives in his own house and uses a manually-operated wheelchair. The petitioner developed M.S. in 1977. Prior to that he had worked successfully for many years in the construction trade.

The petitioner began working with V.R. in 1984 toward the establishment of a barrier-free design business. Because of the petitioner's handicap and his experience in construction, this seemed to be a viable business goal. In June, 1988, after providing the petitioner with various forms of assistance, V.R. closed the petitioner's case as being "successfully rehabilitated in self-employment".

Over the last few years the petitioner's business has been limited--about 5 paying jobs in 1987, 18-20 jobs in 1988;

and 7-10 jobs in 1989. 1988 was the only year the petitioner reported a net profit. In addition, however, the petitioner has donated his time free of charge on several projects (8-10 in 1988; 2-4 in 1989).

The petitioner receives disability benefits from the Social Security Administration. From the outset, V.R. has made its decisions regarding the petitioner's eligibility and status, and provided services to him, based on its "understanding" that the petitioner's business objectives were, at most, limited and part-time--i.e., that any employment earnings should not jeopardize the petitioner's eligibility for disability benefits. The petitioner does not dispute that the Department was correct in this "understanding"--at least until June, 1989.

Prior to 1989, the petitioner relied a great deal on his wife for physical assistance. A particular area in which she helped was transporting the petitioner or helping him get from his wheelchair to the car so he could drive himself. Most of the petitioner's jobs entail trips to a construction site and to meet with clients. Early in 1989, however, the petitioner's wife left him. This resulted in a setback for the petitioner both physically and emotionally.

For travel the petitioner must now rely on the services of others--which poses both an expense and an inconvenience. Because of the various problems caused by his wife's leaving, the petitioner's business has declined

significantly.

The petitioner reapplied for V.R. services in June, 1989. The Individual Written Rehabilitation Plan (I.W.R.P.) developed at that time again designated "barrier-free designer" as the petitioner's "goal". "Services" included "maintain employment"--without specifics. It was at this time that the purchase of a van was first requested and discussed. On October 30, 1989, the Department informed the petitioner that it would only provide \$3,000 toward the petitioner's purchase of a van. On December 28, 1989, the Department, following an administrative review, affirmed its decision.

The dispute in this case centers around whether the petitioner is "job-ready" (see infra). Although the parties disagree as to the meaning of this term, it is clear from the evidence presented, that the Department has never considered the petitioner's vocational goal (a barrier-free design business) as anything other than a limited part-time endeavor that, at most, would modestly supplement the petitioner's Social Security Disability benefits.²

At the hearing, however, the petitioner painted a markedly different picture of his goals and expectations. The petitioner maintained that he now hopes to develop his business into a full-time source of employment, and that he doesn't want or intend to remain on disability. The petitioner submitted a letter from his treating physician stating that the petitioner's working was "crucial" to his

"well being", and that a van was the only medically-viable means of self-transportation for him. It appeared to the hearing officer (and was not disputed by the parties) that in the wake of his wife's leaving, the petitioner has undergone a major reassessment of his goals and aspirations, and that the Department has not adequately considered this change in evaluating the petitioner's rehabilitation potential.

ORDER

The matter is remanded to the Department to develop an I.W.R.P. for the petitioner that considers and addresses the petitioner's stated goal of achieving self-sufficiency, and to evaluate the petitioner's need and eligibility for a van--and any other V.R. "services"--in light of this evaluation. The Department shall report, in writing, to the hearing officer as to the status of this matter by July 15, 1990.

REASONS

Section 301.2 of the V.R. Services Manual sets forth the "general policy" on "transportation services" as follows:

Transportation services may be provided to enable individuals to participate in the application process, in the evaluation of rehabilitation potential, and to accomplish specific objectives of the IWRP; they must be supportive of other services and will be provided only when comparable services and benefits and client resources are not available or must be supplemented. The least expensive method will always be chosen unless contraindicated by the disability or time constraints.

Section 301.3(4) of the regulations refers specifically

to "vehicle purchase", and includes the following:

The Division will normally participate in the purchase of a vehicle only if:

- a. the client has severe handicaps, and
- b. it is clearly documented in the case record to be the most cost-effective alternative, including relocation, of completing the objective, and
- c. the client is job-ready. . .

The petitioner is correct in arguing that the above regulations do not require the petitioner to "demonstrate self-sufficiency" before the Department can consider the purchase of a van as part of his rehabilitation plan.³ The petitioner is incorrect, however, if he maintains that the Department is prohibited under the regulations from applying any cost/benefit analysis to a specific request for V.R. services--including vans. Regardless of how one defines "job-ready",⁴ the provision of any V.R. service depends on the individuals' "vocational rehabilitation potential"; and this potential must be thoroughly evaluated and documented.

34 C.F.R. §§ 361.32-35. In this case, it is clear that the petitioner's "vocational rehabilitation potential" has not been adequately determined. It is also clear that neither the hearing officer nor the board have sufficient information or expertise to make this determination in the first instance.

If the petitioner's work was to be limited to a few jobs a year, with income insufficient to jeopardize the

petitioner's eligibility for Social Security, the evidence does not establish that obtaining outside assistance (in the form of a personal aide) on an infrequent basis to enable the petitioner to visit job sights and meet with clients is not an adequate alternative to the purchase of a van. Nor is there any law or regulation that, to the hearing officer's knowledge, requires the Department to purchase a van for an individual in such circumstances. Thus, if the petitioner is to prevail in this matter, he must establish a "vocational rehabilitation potential" greater than that assumed by the Department up to this time.

Neither party, however, presented any evidence (in the form of "diagnostic studies", or "specific evaluations")⁵ regarding the potential of the petitioner's barrier-free design business. The petitioner's own assessment of his chances of achieving his goals is, at best, speculative. The Department's decision in the case appears to have been based on disputed assumptions of what the petitioner, himself, desired, rather than on any formal "evaluation" of the petitioner's potential. At this point, however, it is a very open question whether these assumptions are valid.

For these reasons, the matter is remanded to the Department for the parties to engage in the requisite evaluations of the petitioner's "vocational rehabilitation potential". Needless to say, the Department is required to follow all appropriate legal procedures in making this determination. Unless and until this is done, however, the

board cannot determine whether the Department's denial of any V.R. service to the petitioner is appropriate.

FOOTNOTES

¹Copies of a prehearing memorandum submitted by the petitioner have been furnished to members of the board. The Department did not avail itself of the opportunity to submit written arguments.

²See Memorandum of Diane Dalmasse (October 30, 1989), petitioner's Exhibit No. 1, p. 2 and of Julius Moeykens, (January 12, 1990), V.R. Exhibit No. 3, p. 4.

³This, in effect, would be requiring the petitioner to demonstrate actual rehabilitation prior to the provision of services for this very purpose--a Swiftian perversion of the goals and purposes of the V.R. program.

⁴The Department's regulations (§ 301.1 (2)) appear to equate job-readiness with the ability to engage in "competitive employment". The petitioner points out that under the federal regulations, "competitive work" can be either full-time or 20-hours-per-week part-time employment that produces compensation in accordance with the Fair Labor Standards Act. 34 C.F.R. §§ 361.1 (c)(2).

⁵See 34 C.F.R. §§ 361.32-33.

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